

**MINUTES
URBAN COUNTY PLANNING COMMISSION
POSTPONED SUBDIVISION ITEMS
& ZONING ITEM PUBLIC HEARING**

March 24, 2011

- I. **CALL TO ORDER** – The meeting was called to order at 1:31 p.m. in the Council Chamber, 2nd Floor LFUCG Government Center, 200 East Main Street, Lexington, Kentucky.

Planning Commission members present: Eunice Beatty; Carla Blanton; Patrick Brewer; Marie Copeland; Mike Cravens; Mike Owens; Derek Paulsen; Carolyn Richardson, Chair; and Lynn Roche-Phillips. Absent were Ed Holmes and William Wilson.

Planning staff members present: Chris King, Director; Bill Sallee; Barbara Rackers; Jimmy Emmons; Traci Wade; Tom Martin; Cheryl Gallt; and Stephanie Cunningham. Other staff members present were Rochelle Boland, Department of Law; Hillard Newman, Division of Engineering; Bob Carpenter, Division of Building Inspection; Tim Queary, Urban Forester; and Captain Charles Bowen and Firefighter Allen Case, Division of Fire and Emergency Services.

- II. **APPROVAL OF MINUTES** – A motion was made by Mr. Owens, seconded by Mr. Brewer, and carried 9-0 (Holmes and Wilson absent) to approve the minutes of the January 27, 2011, and February 24, 2011, meetings.

III. **POSTPONEMENTS AND WITHDRAWALS**

1. **PLAN 2011-26F: FOREST PARK ADDITION (AMD) (5/1/11)*** - located at 201 Forest Park Road.
(Council District 3) **(Wes Witt, Inc.)**

Note: The Planning Commission postponed this plan at its March 10, 2011, meeting. The purpose of this amendment is to subdivide one lot into two lots.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Approval of street addresses as per e911 staff.
5. Urban Forester's approval of tree protection area(s).
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Denote proposed and existing easements.
8. Denote private utility providers as per Article 5-4(e) of the Subdivision Regulations.
9. Add maintenance note per Article 5-4(g) of the Subdivision Regulations.
10. Denote public passage way easement for utility strip and sidewalk adjacent to Forest Park Road right-of-way.

Petitioner Representation: Wesley Witt, Surveyor, was present representing the petitioner. He said that he had informed the Planning Commission members at their March 10th meeting that he would present a site plan for the subject property at this meeting. However, he has since learned that the petitioner is not sure about how he would like for the property to develop at this time. Mr. Witt requested a six-week postponement of this item to the May 12, 2011, Planning Commission meeting.

Action: A motion was made by Mr. Cravens, seconded by Mr. Paulsen, and carried 9-0 (Holmes and Wilson absent) to postpone PLAN 2011-26F to the May 12, 2011, Planning Commission meeting.

- IV. **LAND SUBDIVISION ITEMS** - The Subdivision Committee met on Thursday, March 3, 2011, at 8:30 a.m. The meeting was attended by Commission members: Mike Cravens, Mike Owens, Marie Copeland, Eunice Beatty and Derek Paulsen. Committee members in attendance were: Chuck Saylor, Division of Engineering; and Jeff Neal, Division of Traffic Engineering. Staff members in attendance were: Bill Sallee, Tom Martin, Cheryl Gallt, Chris Taylor, Barbara Rackers, Traci Wade, Jimmy Emmons and Denice Bullock, as well as Captain Charles Bowen, and Firefighter Allen Case, Division of Fire & Emergency Services; Rochelle Boland, Law Department; Luther Sinclair, General Services and Bob Carpenter, Division of Building Inspection. The Committee made recommendations on plans as noted.

General Notes

The following automatically apply to all plans listed on this agenda unless a waiver of any specific section is granted by the Planning Commission.

1. *All preliminary and final subdivision plans are required to conform to the provisions of Article 5 of the Land Subdivision Regulations.*
2. *All development plans are required to conform to the provisions of Article 21 of the Zoning Ordinance.*

A. **PRELIMINARY SUBDIVISION PLAN**

1. **PLAN 2010-131P: HILLENMEYER PROPERTY & DWS PROPERTY (A PORTION OF) (AMD) (3/24/11)*** - located at 2801 Sandersville Road, 803 Greendale Road and 2551 Leestown Road. (Council District 2) **(EA Partners)**

* - Denotes date by which Commission must either approve or disapprove request.

Note: The Planning Commission postponed this plan at its December 9, 2010; January 13, 2011; February 10, 2011; and March 10, 2011, meetings. The purpose of this amendment is to revise the single family lotting pattern and street system. The applicant has submitted a revised version of this Preliminary Subdivision Plan to the staff as of February 22, 2011. It addressed many of the issues previously identified by the Subdivision Committee. Thus, even though a waiver to the Land Subdivision Regulations is necessary, the Staff offered the following, as recommended by the Subdivision Committee:

The Subdivision Committee Recommended: **Approval**, subject to the following revised conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Urban Forester's approval of tree protection plan.
5. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Greenspace Planner's approval of the treatment of greenways and greenspace.
8. Denote existing easements and denote new easements as "proposed."
9. Addition of planting plan information from previous plan.
10. Kentucky Department of Transportation's approval of proposed access to Greendale Road.
11. Denote tree protection areas.
12. Denote location of construction access.
13. Label 20' building line on lots 91 & 92.
14. Clarify proposed development restrictions within 50' of cemetery.
15. Provided the Planning Commission grants a waiver to Article 6-8(a) of the Land Subdivisions Regulations.
16. Resolve applicability of note #18 on the previous plan.
17. Resolve buildable area on lot 22.

Preliminary Subdivision Plan Presentation: Mr. Sallee began the staff's presentation on this preliminary subdivision plan by using a rendered zoning map to orient the Commission to the location of the subject property. It is on the west side of Greendale Road, just to the north of Sandersville Road, and to the north of Leestown Road. The subject property is bordered by Light Industrial (I-1) zoning to the north and south; and Planned Neighborhood Residential (R-3) zoning to the west and east. Sandersville Road stubs into the subject property, which is located on the east side of the planned location of Citation Boulevard. Mr. Sallee noted that there is a previously approved development plan for Sandersville West, a townhouse and single-family residential development that is proposed to be located on the other side of the Citation Boulevard right-of-way.

Mr. Sallee stated that the petitioner is proposing 218 single-family lots, with three detention basins, two of which will be bisected by the extension of Sandersville Road. The extension of Sandersville Road will eventually connect to Citation Boulevard. Mr. Sallee noted that Sandersville Road is the only collector street that is proposed to be constructed on this plan, although Greendale Road is also a collector street at this location. The petitioner proposes to construct several local streets to serve the 218 lots depicted on this plan, including one that will intersect Greendale Road to the north of its current intersection with Sandersville Road.

Mr. Sallee said that the members of the Subdivision Committee might recall a discussion at one of their meetings several months ago about an existing cemetery on the subject property. One of the issues that has delayed Commission consideration of this preliminary subdivision plan is the alignment of Sandersville Road around that cemetery. Mr. Sallee referred to a rendered copy of the preliminary subdivision plan, noting that a buffer required by relatively new zoning restrictions that require a 50' "no disturbance" area around existing cemeteries. The current subdivision plan includes a proposed re-alignment of Sandersville Road compared to the plan that was previously reviewed by the Subdivision Committee, in order to provide a greater separation between the new roadway and the existing cemetery.

Mr. Sallee displayed several aerial photographs of the subject property, noting the location of Greendale Road; Sandersville Road and its current terminus at the subject property; adjacent residential and light industrial developments; a church; and a cell tower. One photograph depicted the right-of-way of Green Spring Court, which will be the point at which Sandersville Road will begin to curve (to the right) in order to bypass the cemetery. Additional photographs depicted the existing treeline, and one grave marker that was visible from the aerial view.

Mr. Sallee stated that the staff had earlier distributed copies of the revised staff recommendation for this plan, which was also distributed at the Commission's March 10th meeting; copies of an existing plan note regarding sinkholes; and copies of the staff report on the two waivers requested in conjunction with this plan. One of those requested waivers refers to the radius of the proposed extension of Sandersville Road. In order to allow the road to curve around the cemetery, the radius will need to be tighter than the minimum required by the Subdivision Regulations. The second requested waiver is to allow the intersection angle with Green Spring Court to be slightly exceeded, by about two or three degrees according to the staff's calculation, from the 80 degree limit required by the Subdivision Regulations.

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Mr. Sallee said, with regard to the revised staff recommendation, that the staff was recommending approval of this plan, subject to the following revised conditions:

The Staff Recommends: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and required street tree information.
4. Urban Forester's approval of tree protection plan.
5. Department of Environmental Quality's approval of environmentally sensitive areas.
6. Bike and Pedestrian Planner's approval of bike trails and pedestrian facilities.
7. Greenspace Planner's approval of the treatment of greenways and greenspace.
- ~~8. Denote existing easements and denote new easements as "proposed."~~
- ~~9. Addition of planting plan information from previous plan.~~
- ~~10. 14. Kentucky Department of Transportation's approval of proposed access to Greendale Road.~~
- ~~9. 11. Denote tree protection areas.~~
- ~~12. Denote location of construction access.~~
- ~~13. Label 20' building line on lots 91 & 92.~~
- ~~10. 14. Clarify proposed development tree protection restrictions within 50' of cemetery.~~
- ~~11. 15. Provided the Planning Commission grants a waiver to Article 6-8(a) of the Land Subdivisions Regulations.~~
- ~~16. Resolve applicability of note #18 on the previous plan.~~
- ~~12. 17. Resolve buildable area on lot 22.~~

This recommendation is made based on the plan submitted by the petitioner on March 9th. Several of the original conditions for approval had been met on the revised plan, so the staff recommends that they be deleted. The staff added conditions #9 and 10 in order to require that a tree preservation area be identified around the cemetery, and along the southern (I-1) property line, in order to preserve the existing treeline. Condition #12 relates to the sinkhole note that exists on the plan. With that note, and the addition of closed contour information near lot 22, which is directly adjacent to the future Citation Boulevard right-of-way, the staff believes that that condition can be easily resolved. Mr. Sallee noted that a sinkhole note is common on any plan when also accompanied by a delineation of the closed contour.

Waiver Request Presentation: Mr. Martin presented the staff's report on the requested waivers, noting that both waivers relate to the alignment of Sandersville Road as it relates to the protection of the existing cemetery. Since both terminations of Sandersville Road are at fixed points, and the roadway must curve in order to avoid the cemetery, the petitioner has requested a waiver from the required 500' radius of the curve to a proposed radius of 325'. The staff has reviewed this request, along with staff of the Division of Traffic Engineering, and has determined that the design of the road constitutes a hardship and the proposed 325' radius would be an appropriate solution. The second waiver concerns the angle of the intersection with Green Spring and Sandersville Road. The angle is approximately five to eight degrees from the required due to the realignment. The staff is recommending approval of this waiver request.

Mr. Martin noted, however, that the staff was concerned about two lots that are depicted on the plan as being longer than the recommended proportion of length to width. The Subdivision Regulations require that safe and convenient pedestrian and vehicular access be provided for all lots. The staff is concerned about vehicular access to those two lots. The petitioner has had some discussions with staff about the use of either an "eyebrow" or a frontage road, either of which option the staff believes might provide a workable solution. The staff is comfortable that this concern can be addressed at the time of a final record plat for the property, and is recommending approval of the both of the requested waivers.

In conclusion, Mr. Sallee stated that the Commission had reviewed this plan at their March 10th meeting, and had postponed it until this meeting in order to get additional information about the sinkhole and hear the comments from the professional regarding the existing cemetery area.

Petitioner Representation: Howard Cruse, Ball Homes, was present representing the petitioner. He apologized to the Commission for his lack of information at the March 10th meeting with regard to the cemetery, and noted that the professional who reviewed the site was present at today's meeting. Mr. Cruse stated that the petitioner is in agreement with the staff's recommended conditions, and he requested approval of this plan.

Mr. Cruse noted that there was one correction to make to the testimony he provided at the Commission's meeting two weeks ago. He said that, at that meeting, Mr. Owens had displayed photographs of depressions in the ground at the cemetery site, which Mr. Cruse had referred to as areas where bodies were buried. In fact, those were areas that were excavated in order to search for graves, rather than actual burial plots. Mr. Cruse noted that Alexandra Bybee from Cultural Resource Analysts was present in order to discuss that issue further.

Alexandra Bybee, Cultural Resource Analysts, stated that there was an area of existing, very old trees which was thought to be the cemetery boundary. She said it was typical of cemeteries of the mid-19th century to be surrounded by trees and, often, by a fence.

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Ms. Bybee stated that the petitioner had hired her company to review the cemetery site and define the extent of the boundaries. Since the petitioner is required to provide a 50' buffer around the cemetery, they wanted to clearly define the boundaries in order to make sure that the appropriate area is buffered. The professionals from Cultural Resources Analysts had the petitioner do some light removal of vegetation in a 30' area around the presumed boundary of the cemetery. They removed the topsoil in the area using a backhoe with a smooth bucket, in order to search for grave shafts, which are the rectangular areas created by the digging of graves. Grave shafts are typically 3' by 6' for adults, and somewhat smaller for children. Grave shafts can be located by removing the topsoil, and searching for areas of soil disturbance, which are mottled and lighter in color than the surrounding soil. Ms. Bybee stated that the archeologist who headed the team determined that there were no graves outside of the existing heavy tree boundary.

Commission Questions: Mr. Owens displayed several photographs of the cemetery area for the benefit of the Commission members who were not present when they were originally displayed at the March 10th meeting. The photographs depicted the overall cemetery site; several visible depressions found on the site, with a yardstick to indicate depth; excavated areas; a grave stone from 1814; and the outer edges of the cemetery area, including the exposure of tree roots in excavated areas.

Ms. Bybee stated that the depressions depicted in the photographs indicate areas where the archeologist who reviewed the site checked the soil to see if graves were located there. It was determined that no graves were located in the area of the depressions.

Mr. Owens stated that Ms. Bybee had signed off on the report prepared by Cultural Resource Analysts, and asked if she had personally supervised the excavation. Ms. Bybee answered that she had reviewed the site with the supervising archeologist recently. She noted that the archeologist who supervised the excavation had a great deal of experience with this type of operation. Mr. Owens stated that he found it troublesome that Mr. Cruse had indicated at the March 10th meeting that he would bring the archeologist who supervised the excavation to the Commission's meeting today, and he did not do so. Ms. Bybee stated that that archeologist was currently in the field, working on another project.

Mr. Owens asked if any graves were found outside of the original cemetery boundaries. Ms. Bybee answered that there were no graves outside of that boundary. Mr. Owens stated that, due to the presence of fallen leaves in the photographs included in Cultural Resource Analysts' report, it appeared that those pictures were not taken in July at the time of the preparation of the report. Ms. Bybee responded that those photographs were taken just a few weeks prior to this meeting. When Cultural Resource Analysts was first contracted for this project, they were told by the petitioner that no official report would be needed, so they did not photograph the site during the excavation work in July of 2010.

Mr. Owens stated that he had spoken with Dave Pollack of the University of Kentucky anthropology department, and Mr. Pollack had noted his respect for Ms. Bybee's work. Mr. Pollack told Mr. Owens that, if additional gravesites had been found, Ms. Bybee would have informed everyone involved in the project and assured that the sites were protected. Mr. Owens thanked Ms. Bybee for her work on the project.

Ms. Copeland stated that she, too, was disappointed that the archeologist who supervised the excavation of the site was not present at this meeting. She said that, based on what she saw in Mr. Owens' photos of the site, the excavation appeared to have been "heavy-handed," and she asked if remote sensing had been used to detect the presence of gravesites. Ms. Bybee answered that remote sensing would not have worked in this situation, due to the heavily treed nature of the site. She said that ground-penetrating radar and electromagnetic sensors will not work in areas of heavy vegetation. Ms. Copeland asked if sounding had been used to locate graves. Ms. Bybee responded that no geophysical exploration took place, since it would not have worked on this cemetery site. Instead, the archeologist physically stripped the topsoil to identify grave shafts. Ms. Copeland asked why remote sensing was not used outside the cemetery boundary, where there were fewer trees. Ms. Bybee responded that, even outside the heavily treed boundary of the site, there were smaller trees and "stubble" vegetation that would have interfered with geophysical means of detection. Ms. Copeland said that she appreciated that the graves had been located, but she believed that the exploration was too heavy-handed, and the Commission was not able to question the individual who actually supervised the operation. Ms. Bybee stated that she believed that the supervising archeologist would have provided the same answers to the Commission members' questions had she been present at this meeting. She said that the methods used on this site were the typical methods used by Cultural Resource Analysts for the inspection of any cemetery site, and noted that Mr. Pollack was currently conducting a similar excavation operation at the Eastern State Hospital site in order to identify hundreds of graves recently discovered there.

Ms. Roche-Phillips asked if the depressions depicted in the photographs were dug by hand. Ms. Bybee answered that the depressions were dug by a backhoe, but they were very shallow, involving just the removal of topsoil. She noted that the archeologist in charge of the excavation also used a tile probe, which is a steel probe used to assess the soil to detect disturbances in possible grave shafts.

Commission Comments: Mr. Owens stated that he was concerned about the obvious excavation that was done at the cemetery site, and he understood that an approved preliminary development plan had to be in place prior to any excava-

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tion. He asked why the appropriate procedures were not followed in this situation. Mr. Cruse answered that he did not believe that the work that was done on the site constitutes excavation as defined by the Subdivision Regulations. He said that that definition of excavation refers to the construction of roads and other types of infrastructure. There was some limited amount of excavation done on the subject property before the petitioner purchased it, in order to note the location of sinkholes.

Rena Wiseman, attorney, stated that the Subdivision Regulations require that any cemeteries be depicted on a preliminary subdivision plan. She said that that identification is based on historic records, fence lines, or "other criteria as determined by a certified archeologist." Ms. Wiseman said that the petitioner had to perform some exploration of the site in order to correctly depict the cemetery boundaries on the plan and be in compliance with the Zoning Ordinance and the Subdivision Regulations. Mr. Owens stated that he was not suggesting that the expert should not inspect the site. Ms. Wiseman responded that it appeared that Mr. Owens was suggesting that the petitioner should not have done any exploration. Mr. Owens said that final development plans are often approved with a condition that requires the petitioner to delineate the boundaries of a cemetery; it would have been acceptable for the petitioner to do so in this case. Ms. Wiseman stated that there will be no final development plan in this instance; this preliminary subdivision plan is serving as the same vehicle to authorize construction to begin on the site. She added that the work that was done on the site is not the type of grading or excavation that cannot be done without an approved development plan; it was simply site investigation such as is typically done to detect the location of sinkholes.

Mr. Cruse noted that there is a certified preliminary subdivision plan for the subject property, and that that plan had been amended a couple of times prior to this plan. Mr. Cruse stated that he was concerned about the need for this discussion, since the limited excavation of the site was done specifically to meet the requirements of the Subdivision Regulations.

Mr. Owens said that it was disturbing to him that the Zoning Ordinance prohibits grading or excavation within 50' of a cemetery, but excavation can be done to a depth of two feet within the cemetery in order to delineate the boundaries. He stated that it had been several months since the original disturbance on the site, and the ground had not yet been restored. Mr. Owens asked if the petitioner intended to restore the site. Mr. Cruse answered that the only disturbance on the site had been the removal of the topsoil, which the petitioner would agree to replace. Mr. Owens asked what type of preservation measures would be provided for the cemetery. Mr. Cruse responded that the Zoning Ordinance requires fencing around the cemetery, which will be owned and maintained in perpetuity.

Citizen Comments: Jamie Millard, 2580 Waterwild Lane, stated that he was the former president of the Bluegrass Trust for Historic Preservation and Friends of McConnell Springs; current president of the Lexington History Museum; and former member of the board of the Fayette County Cemetery Trust.

Mr. Millard said that his opinion had changed completely after listening to the information provided at this meeting. He said that he has identified an unprotected cemetery on his farm, which had been used by previous owners of the property as a location for a barn and a road. He has since fenced off the cemetery, and protected the only two remaining tombstones. Mr. Millard stated that Cultural Resource Analysts assisted him in identifying the precise locations of the bodies in that cemetery as part of a ten-year project that also involved fourth graders from Sayre School. Over those ten years, Mr. Millard observed their professionalism, and he trusts that the excavation work done on the subject property was all appropriate. He believes that the petitioner has been sensitive in protecting the cemetery, going beyond the basic requirements of the Zoning Ordinance and providing the kind of protection dictated by simple human decency. Mr. Millard said that, although it might appear that the excavation work on the cemetery was too intense, in some cases, "you have to destroy to discover." Given the large amount of vegetation on the subject property, Mr. Millard did not believe that Cultural Resource Analysts could have identified the graves by any means other than the type of excavation that was performed.

Lisa Sanden, former president of the Fayette County Cemetery Trust, stated that that organization had been officially dissolved, but all of the members are still located in Lexington and are still active in the community. She said that the purpose of the Trust was not just to identify, locate, preserve, and protect historic cemeteries, but to advocate for the families whose ancestors are buried in the cemeteries. Ms. Sanden has been in contact with the Payne family, who formerly owned the subject property, and they are concerned because they have not been able to participate in the discussions about the cemetery with the petitioner. Ms. Sanden noted that the Fayette County Cemetery Trust was the second entity to notify the petitioner about the location of the cemetery on the subject property, of which they were not aware when they purchased the property.

Ms. Sanden stated that she resides in the Sandersville Road area, and many of the residents would like for the road to be connected, but it must be done in a manner that will provide protection for the cemetery. She commended the Planning Commissioners and the petitioner for their willingness to discuss these issues, and to preserve the cemetery. Ms. Sanden said that she supports the work of Cultural Resource Analysts, but the Payne family would have preferred to have been notified prior to the beginning of the excavation on the subject property. She added that she does not believe that the petitioner is a good neighbor, and that she would recommend that the Masterson Station Neighborhood Association be required to maintain the cemetery.

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Commission Questions: Ms. Roche-Phillips asked Ms. Sanden if it was correct that the Payne family prefers that no action be taken on this plan until they can discuss their concerns with the petitioner. Ms. Sanden answered that that was correct. Ms. Roche-Phillips asked if the Payne family was seeking postponement of this plan, or some other action by the Planning Commission to resolve the issue. Ms. Sanden answered that the family representative with whom she has been in contact lives in the western part of the country, and she had not offered an opinion on the proposed development plan. She added that there is a direct descendant of the Payne family who lives nearby with whom she has also been in contact, but that family member has not been able to form an opinion about the plan because she does not know what the petitioner is proposing. One of the family members spoke with the petitioner's attorney a week prior to this meeting, and was informed that no action was taking place on the property and there was no development proposed there. Ms. Sanden stated that the family would like to have better communication with the petitioner about the proposed plan and its effect on the protection of the cemetery.

Ms. Copeland believed that this was the first cemetery to be reviewed by the Commission under the recently adopted protection Ordinance, and she would like to know what measures should be in place to provide protection in addition to the required fencing. She said that she believed that the area that was disturbed should be restored; tree protection and enhancements should be put in place; and ground cover or grass seed should be required. She asked at what point the Commission needed to put those measures in place. Mr. Sallee answered that the staff is recommending tree preservation in the area of the cemetery. He said that the Planning Commission could also add conditions with regard to Ms. Copeland's other concerns, and he would defer to Ms. Boland for the wording of those conditions. Mr. Sallee added that there would be final record plats for this subdivision, either before or after the infrastructure is completed, so this will not be the last plan the Planning Commission will review for both the cemetery area and the street that will pass nearest to it.

Ms. Copeland stated that it might be appropriate to defer those issues to the final record plat for this particular cemetery, but asked if recommendations for cemetery enhancement would be in place prior to receiving any other plans for properties that include private cemeteries. Mr. Sallee responded that the Ordinance requires fencing around the cemetery, and the staff is recommending tree preservation beyond the fenced area as well. The plan currently depicts the required 50' no disturbance area, and the Commission will have the opportunity to review any other details beyond these at the time of the filing of a final subdivision plan for this area. Ms. Copeland stated that she did not believe that the cemetery should be left in its current state until the filing of the final record plat, but that the topsoil should be replaced in order to cover the exposed tree roots. She asked if the Commission could place such a condition on the plan today. Mr. Cruse replied that the petitioner would agree to replace the topsoil. He said that one of the reasons for leaving the cemetery in that condition was to clearly delineate its boundaries and the area in which the graves are located.

Legal Comment: Ms. Boland stated that it would be appropriate to include a condition requiring that the topsoil be returned so that the grade could be restored. She said that it would not be appropriate to require the planting of any vegetation or other extensive work on the cemetery since development will be taking place around it. Mr. Cruse stated that the petitioner would agree to restore the topsoil and seed all of the disturbed area.

Ms. Beatty asked if Ms. Sanden was representing the Payne family as an attorney. Ms. Sanden answered that she was not, but that, as a former member of the Fayette County Cemetery Trust, she serves as an advocate for the family of anyone buried in the County. Ms. Beatty asked if the Payne family has an attorney. Ms. Sanden answered that the family does not have an attorney, but they have been in contact with the petitioner's attorney about the cemetery. Ms. Beatty asked if the family was satisfied with their communication with the petitioner. Ms. Sanden responded that they were not.

Petitioner Comments: Mr. Cruse stated that the petitioner was contacted by the Payne family and made aware of the location of the cemetery on the subject property. The petitioner made a commitment to the family to refrain from developing this portion of the property until such time as an amended plan that included preservation of the cemetery could be filed. He reiterated that the exploration and excavation of the cemetery was part of the delineation process, and that he believes that the petitioner is in direct compliance with the wishes of the Payne family.

Commission Questions: Mr. Owens asked, with regard to the staff's proposed new condition #10 which pertains to tree protection, what the staff's goal was in recommending that condition. Mr. Sallee answered that the existing plan does not identify any areas of tree protection within 50' of the cemetery, or any of the existing tree canopy near the cemetery being retained. The staff would like to see ordinary tree protection plan information, especially in that area of the subject property. Mr. Owens asked if that would include the trees located within the cemetery itself. Mr. Sallee responded that it would. Mr. Owens asked what would be done to mitigate the damage to the trees that were depicted in the photographs with bare roots. Mr. Sallee said that he was unsure what measures could be taken, and he would defer that question to Mr. Queary. He added that it might also be appropriate to address the issue of tree protection areas at the time of the filing of a final record plat for the property. Mr. Owens displayed a photograph of bare tree roots in the cemetery area, and noted that those were significant trees within the cemetery area, of approximately 14 inches in diameter. He said that he believed that some standards must be put in place to prevent that type of damage in the future.

Mr. Brewer stated that it appeared to him that the roots were exposed as part of the excavation that was performed to determine the location of the gravesites. He said that he had originally thought that the excavation of the cemetery had been done badly; but he now believed, after listening to Ms. Bybee's explanation, that all of the work had been done ap-

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propriately. Mr. Brewer noted that it is not within the Planning Commission's purview to address the communication problems between the petitioner and the Payne family, and agreed that some standards should be created to address cemetery protection in future developments. He said that he believed that this plan should go forward today, and that the staff could begin the process to put standards in place for the next cemetery that comes before the Commission on a subdivision or development plan.

Action: A motion was made by Mr. Cravens, seconded by Ms. Beatty, and carried 7-2 (Owens and Roche-Phillips opposed; Holmes and Wilson absent) to approve PLAN 2010-131P; including the requested waivers; subject to the 10 conditions as listed in the revised staff recommendation; and adding a new condition to require replacement of the topsoil, and seed and straw the affected areas.

B. FINAL SUBDIVISION PLANS

1. PLAN 2005-196F: SHARKEY PROPERTY, UNIT 2-B (5/24/11)* - located at 1700 Leestown Road (a portion of).
(Council District 2) **(EA Partners)**

Note: The Planning Commission postponed this plan at its March 10, 2011, meeting. The Commission originally approved this plan on August 11, 2005, subject to the following (original) conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
3. Building Inspection's approval of landscaping.
4. Urban Forester's approval of tree inventory map/tree preservation plan.
5. Approval of street addresses by e911 staff.
6. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
7. Provided that all appropriate rights-of-way are dedicated, either through the recordation of Unit 2-A, or by adding the streets to this plat.

The Planning Commission reapproved this plan on August 10, 2006; November 8, 2007; January 15, 2009 and May 13, 2010, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
3. Building Inspection's approval of landscaping.
4. Approval of street addresses by e911 staff.
5. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
6. Denote: No building permit shall be issued for lots 50 and 54 until an easement minor plat is certified.

Note: The applicant has now requested a continued discussion to revise condition #6.

The Subdivision Committee Recommended: Postponement. The continued discussion item proposes changes to the approved lotting pattern. However, the proposed change to the corollary development plan does not meet Article 9 requirements.

C. DEVELOPMENT PLANS

1. DP 2010-23: SHARKEY PROPERTY, UNIT 2-B (AMD) (5/24/10)* - located at 1758 Hatter Lane.
(Council District 2) **(EA Partners)**

Note: The Planning Commission postponed this plan at its March 10, 2011, meeting. The Commission originally approved this plan on May 13, 2010, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Approval of street addresses as per e911 staff.
5. Urban Forester's approval of tree protection plan.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.
7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. Denote construction access.
10. Denote height of townhouses.
11. Document open space and lot coverage compliance.
12. Correct typical townhome layout.
13. Resolve sanitary sewer easement conflict on lots 50 and 54 prior to certification.

* - Denotes date by which Commission must either approve or disapprove request.

14. Document side yard compliance for proposed lot 60.
15. Provided the Planning Commission makes a finding per Article 6-8(m) of the Land Subdivision Regulations on the proposed access easement.

Note: The applicant has requested a continued discussion to revise condition #13.

The Subdivision Committee Recommended: **Postponement**. The revised development plan does not appear to meet Article 9 requirements for perimeter setbacks.

Staff Presentation: Mr. Martin presented the final record plat and the corollary development plan for the same property--also listed on the agenda for today's meeting. He briefly oriented the Commission members to the location of the subject property using a rendered copy of the final subdivision plan. The property has frontage on Old Towne Walk and Towne Square Park.

Mr. Martin stated that this final subdivision plan depicts single-family homes with frontage on Towne Square Park and townhouse lots with an associated parking lot. As part of a previous Planning Commission action on this plan, an access easement was approved to serve the proposed development.

Mr. Martin said that the staff had drafted the following revised recommendation for the final record plat:

The Staff recommends **Approval**, subject to the following revised conditions:

1. Urban County Engineer's acceptance of drainage, storm and sanitary sewers.
2. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
3. Building Inspection's approval of landscaping.
4. Approval of street addresses by e911 staff.
5. Addition of utility and street light easements as required by the utility companies and the Urban County Traffic Engineer.
6. Denote: No building permit shall be issued for lots 47, 48, 50 and 54, 55, 57 - 60 until an easement minor plat is certified.

Mr. Martin stated that this plan had been brought back before the Commission in order to revise condition #6, which relates to the location of a sanitary sewer easement on the property. A restriction was placed on the plat in order to prevent the issuance of any building permits in the area of the sanitary sewer easement until the existing conflict is resolved. It has also become apparent that the existing drainage easement is in conflict with several lots, and the actual number of affected lots has increased. The petitioner has also increased the size of the proposed access easement, in order to relieve some of the on-street parking in the area.

Mr. Martin presented the corollary development plan, noting the area to which the final record plat refers, which includes the detention basin and easement area.

Mr. Martin reported that this development plan was brought back before the Commission by the petitioner to address the timing of the easements, as well as their construction. Mr. Martin said that the petitioner must be able to work on the site, reconfigure the detention basin and the easements, and then request approval from the Council for the release of any parts of these easements that are no longer necessary.

Mr. Martin stated that, when the petitioner initially submitted this final record plat and development plan for continued discussion, they indicated that they had done so in order to address the timing of the easement releases. However, the staff discovered that the plans had also been revised, which raised some concerns, so the staff and the Subdivision Committee recommended postponement of both items. The petitioner has subsequently submitted revised plans, which were very similar to the plans originally approved by the Commission, with the exception of the enlarged parking lot and parking easement. The petitioner is now requesting Commission approval of these revised plans in order to construct the basins and easements under the improvement plan process. They then plan to file a minor subdivision plat that will reflect the correct configuration of the easements. That would remove the conflict and allow for the issuance of a building permit for this location.

Mr. Martin said that the staff is recommending approval of the development plan as well, subject to the following revised staff recommendation:

The Staff recommends **Approval**, subject to the following revised conditions.

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Approval of street addresses as per e911 staff.
5. Urban Forester's approval of tree protection plan.
6. Greenspace Planner's approval of the treatment of greenways and greenspace.

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7. Division of Fire's approval of emergency access and fire hydrant locations.
8. Division of Waste Management's approval of refuse collection.
9. ~~Denote construction access existing easements.~~
10. ~~Denote height of townhouses.~~
10. 44. Document compliance with open space and lot coverage compliance requirements per proposed townhouse lots and correct building envelope, as necessary.
11. 42. Correct typical townhome layout.
13. ~~Resolve sanitary sewer easement conflict on lots 50 and 54 prior to certification.~~
14. ~~Document side yard compliance for proposed lot 60.~~
15. ~~Provided the Planning Commission makes a finding per Article 6-8(m) of the Land Subdivision Regulations on the proposed access easement.~~
12. Denote the certification of an easement minor plat or denote encroachment permits obtained prior to the issuance of a building permit (to resolve the building conflict with the existing detention easement and the sanitary sewer easement).

Mr. Martin said, with regard to the conditions for approval of the final record plat, that there are an additional number of lots proposed. He noted that some additional conflicts with the stormwater drainage easement necessitated the release of both the sewer easement and the detention easement, which impacts nine of the proposed lots.

With regard to the conditions for approval of the development plan, the staff has proposed a new condition #12, which would require the certification of an easement minor plat or an encroachment permit prior to the issuance of a building permit. Mr. Martin reiterated that the staff is now recommending approval of the final record plat and the development plan.

Petitioner Representation: Rory Kahly, EA Partners, was present representing the petitioner. He said that the petitioner was in agreement with the revised conditions, and he requested approval.

Commission Questions: Ms. Copeland stated that the rendering of one of these two plans had a north arrow pointing up, while the north arrow on the other plan points down. Mr. Kahly responded that it was common to place an adjacent street "at the bottom" of a plan in order to make it easier for plan reviewers to orient themselves to the property from the street. Ms. Copeland stated that it would help the Commission members to always have the north arrow pointing to the top of the page on plans. Ms. Beatty agreed that having the two plans oriented differently made it difficult for Commission members to review.

Action: A motion was made by Mr. Brewer, seconded by Mr. Cravens, and carried 9-0 (Holmes and Wilson absent) to approve PLAN 2005-196F and DP 2010-23, subject to the conditions as listed in the revised staff recommendations.

2. DP 2011-18: JAMES MOTOR CO. & KATHRYN M. MCBRAYER PROP. (AMD) (5/1/11)* - located at 2440 Richmond Road. (Council District 5)
(EA Partners)

Note: The Planning Commission postponed this plan at its March 10, 2011, meeting. The purpose of this amendment is to increase the buildable area, realign the access and parking, and revise the landscape buffers.

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
8. Addition of existing building dimensions.
9. Addition of height of existing and proposed buildings.
10. Correct note #8 for Lot 2.
11. Addition of contour information and source information for Lot 1.
12. Clarify public off-street parking areas (55 spaces to be provided).
13. Addition of tree inventory for Lot 2.
14. Correct note #4 to reference Code of Ordinances.
15. Addition of street cross-sections for Richmond Road.
16. Denote the 6' fence along the landscape buffer area, to the approval of the Division of Building Inspection.
17. Discuss the need for sidewalk improvements along Richmond Road frontage.

Staff Presentation: Mr. Sallee presented the amended final development plan, using an aerial photograph to orient the Commission to the location of the subject property near the western quadrant of the New Circle Road interchange with

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Richmond Road. He stated that the subject property is bordered by Lake Park Drive, which serves a number of multi-family residential units, as well as an extended-stay hotel. The subject property is approximately 60% developed, with nearly three undeveloped acres included as part of this development plan.

Mr. Sallee stated that the existing car dealership on the subject property currently has about 30,000 square feet of floor area. The proposed development plan amendment is for an addition to the rear of the dealership, which would be approximately 12% of the size of the existing building, or just over 3,150 square feet in size. In addition, this plan is proposing modest changes to the circulation and parking, as well as to some of the proposed landscaping. Mr. Sallee referred to a rendered copy of the proposed development plan, noting the building; the proposed addition; the existing and proposed paved areas; the employee parking area; and the access to the property from both Richmond Road and Lake Park Drive, which is not proposed to change.

Mr. Sallee said that the Subdivision Committee recommended approval of this plan, subject to the 17 conditions as listed on the agenda. He noted that the staff had prepared the following revised recommendation, which had been distributed to the Commission members prior to this meeting:

The Staff Recommends: **Approval**, subject to the following requirements:

1. Urban County Engineer's acceptance of drainage, storm, and sanitary sewers.
2. Urban County Traffic Engineer's approval of street cross-sections and access.
3. Building Inspection's approval of landscaping and landscape buffers.
4. Addressing Office's approval of street names and addresses.
5. Urban Forester's approval of tree protection plan.
6. Division of Fire's approval of emergency access and fire hydrant locations.
7. Division of Waste Management's approval of refuse collection.
- ~~8. Addition of existing building dimensions.~~
- ~~9. Addition of height of existing and proposed buildings.~~
- ~~10. Correct note #8 for Lot 2.~~
- ~~11. Addition of contour information and source information for Lot 1.~~
12. Clarify public ~~Correct the off-street parking areas (55 spaces) to be in the "provided parking" statistic).~~
13. Addition ~~Remove parking space conflict (3 spaces) in area of tree inventory for Lot 2.~~
- ~~14. Correct note #4 to reference Code of Ordinances.~~
15. Addition of ~~Revise street cross-~~ half-sections for Richmond Road to indicate a 6' wide grass median (per Plan 2009-13F cross-section).
16. Denote the 6' fence along the landscape buffer area containing conditional zoning restrictions (on the western property line) or clarify new fence locations, to the approval of the Division of Building Inspection.
17. ~~Discuss~~ Regarding the need for sidewalk improvements along Richmond Road frontage; Denote that "The need for sidewalks along the frontage of Richmond Road will be reviewed at the time a Final Development Plan is submitted for Lot 2."

Mr. Sallee said that the plan being presented today is a revised submission received since the Subdivision Committee meeting earlier in the month. Several of the conditions that were placed on the plan after the Subdivision Committee's review have been met with this revised submission, including conditions #8-11. Mr. Sallee said that condition #12 refers to a discrepancy between the number of parking spaces included in the site statistics and the actual number of spaces depicted on the plan. Condition #13 refers to three additional parking spaces that are proposed near an area of existing trees. Since those trees are part of a conditional zoning (buffering) restriction, the staff would like for those parking spaces to be relocated in order to avoid any conflict with a required tree preservation area. Mr. Sallee said that condition #14 had been met with this revised submission, and it could also be deleted. Condition #15 would require a modest correction to the street cross-section, so that it will match the cross-section on an existing plat. Mr. Sallee stated that the staff is recommending that condition #16 be retained, as it refers to fencing that is required by conditional zoning restrictions as part of a landscape buffer. The petitioner has added a note to the plan about fencing along the landscape buffer, and the staff would like for the note to be clarified to reference the conditional zoning restriction.

With regard to condition #17, Mr. Sallee stated that it refers to the issue that led to the postponement of this plan at the Commission's meeting two weeks prior to this meeting. There is a sidewalk on Richmond Road up to the other side of the New Circle Road on-ramp, and the staff believes that it might be appropriate at this time to consider a sidewalk across the subject property. There is an existing Ordinance that can allow a payment in lieu of sidewalk construction; but that Ordinance is not applicable in this case, because the proposed addition to the building does not equal 25 percent or more of the existing square footage. However, there are still three acres of the subject property that are undeveloped, so the Commission will have the opportunity to review additional plans involving this property in the future. Mr. Sallee said that, in order to eliminate the discussion condition, the staff would ask that a note be placed on the plan that, at the time that this plan comes back to the Planning Commission for consideration for future development, the sidewalk along the frontage of the property will be part of that review.

Mr. Sallee said that the staff is recommending approval of this plan, subject to the revised conditions.

Commission Questions: Ms. Copeland asked, should the undeveloped portion of the subject property be sold, if the new owner would be obligated to construct the sidewalk on property belonging to another owner. Mr. Sallee answered that the new owner would probably not be constructing a sidewalk on someone else's property. He said that the sidewalk would be constructed within the existing right-of-way of Richmond Road--more consistent with the current practice. Ms. Copeland asked if that would be the case on the subject property, given that it is used for a business and the owner might not want the sidewalk construction to disrupt their business practice. Mr. Sallee responded that the sidewalk would be constructed in the right-of-way, which would be subject to the approval of the Highway Department. He noted that, at that time, the staff would talk to the Highway Department to determine the best possible location for the sidewalk. Ms. Copeland asked if waiting to construct the sidewalk would be "putting off a burden" onto two separate entities. Mr. Sallee answered that it would be part of the development plan, and anyone interested in purchasing the vacant three-acre property would see on the plat that it is subject to a development plan. On the development plan, the sidewalk would be denoted as an issue that must be considered at the time that development is proposed for the lot.

Ms. Roche-Phillips asked, with regard to the sidewalk, if it would be extended in front of the nearby gas station and reservoir. Mr. Sallee responded that he was not aware of any sidewalk on the same side of Richmond Road as the subject property between New Circle Road and Fontaine Road. He noted that there is sidewalk on Lake Park Road that ends right at its intersection with Richmond Road. Ms. Roche-Phillips asked if extending the sidewalk along the subject property could create a pedestrian connection between Lakeview Drive and the New Circle Road underpass. Mr. Sallee responded that that was correct, but added that the frontage of the service station would still be without a sidewalk, but there is currently a paved area near their landscape island.

Mr. Owens asked if Lot 2 would have access to Richmond Road or New Circle Road. Mr. Sallee answered that there is currently at least one access to Lake Park Road for that lot, but it is currently unclear whether traffic could travel through the subject property to reach Richmond Road. Mr. Owens said that he did not believe that it would be appropriate to place the burden of constructing the sidewalk on a possible future owner of the Lot 2 property.

Mr. Cravens asked if the properties shown on the development plan are currently two separate lots. Mr. Sallee responded that there are two separate lots. Mr. Cravens asked, should the petitioner choose to expand the car dealership to Lot 2, if the sidewalk would be required to be constructed at that time. Mr. Sallee answered that that would not necessarily be the case; as the note proposed on the development plan would only require that the issue be reviewed at that time.

Ms. Copeland asked how many feet of sidewalk would need to be constructed, and at what cost. Mr. Sallee responded that he was not sure of the cost, but Mr. Cruse had estimated it at approximately \$4,000.00. He added that the frontage is approximately 250 feet, which would include part of an existing paved area that is part of the existing access point. Ms. Copeland asked what size the addition to the building is proposed to be, to which Mr. Sallee responded that this plan is proposing a 3,162 square-foot addition on an existing 30,000 square-foot building.

Mr. Owens asked when a plan for this property originally came before the Planning Commission. Mr. Sallee answered that the first development plan was probably submitted in the 1980s. Mr. Owens asked when the most recent amendment was made to the plan. Mr. Sallee replied that this plan was last amended within the last three years. Mr. Owens asked if the sidewalk was discussed at that time. Mr. Sallee answered that it was not, to his knowledge. Mr. Owens asked why. Mr. Sallee responded that the only thing that is different on the subject property today is that a sidewalk has since been constructed to the edge of the property, across the on-ramp, which was not in existence at the time of the last amendment to the plan.

Ms. Copeland asked if there was a sidewalk on the other side of Richmond Road. Mr. Sallee answered that there was not. She said that sidewalks are needed in this area as well, and that by requiring the construction of a sidewalk on the subject property, it would lay the foundation for pedestrian connections to be supplied on other properties in the area. Mr. Sallee responded that that was the reason why the staff wanted to have this issue revisited in the future.

Petitioner Representation: Howard Cruse, Ball Homes, was present representing the petitioner. He said that the petitioner is in agreement with the conditions as set forth by the staff, and he requested approval of this plan.

With regard to the sidewalk, Mr. Cruse said that the Ordinance that requires the construction of the sidewalk specifies that the developer shall contribute to the cost of a sidewalk. The petitioner made an offer to cover that cost; however, the Ordinance also specifies that the offer must be accompanied by two certified bids, which the petitioner was not able to prepare and obtain in time for this meeting. Mr. Cruse said that the dollar amount he quoted to Mr. Sallee was based on the construction of a 4' wide sidewalk, for a length of 300 feet, at the unit prices that have been established by the Division of Engineering for new construction development. Since the petitioner was unable to provide the bids as required by the Ordinance, Mr. Sallee suggested deferring the issue of sidewalk construction. Mr. Cruse noted that the proposed addition to the building does not equal 25% of the size of the existing building, which is the threshold indicated by the Ordinance to require bid submission for a sidewalk.

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Mr. Cruse stated that existing conditions on the subject property would make construction of the sidewalk extremely difficult. The petitioner would be required to obtain an encroachment permit from KYDOT; construct two culverts; and provide traffic control on a major arterial. Mr. Cruse asked why, since LFUCG constructed the sidewalk on the other side of New Circle Road and under the overpass, they did not continue that construction across the petitioner's property, since funding has been established to provide sidewalks and bike lanes in Lexington. Mr. Cruse displayed several photographs of the subject property and the surrounding area, noting the existing sidewalks; bike lanes; and ditches that will require culverts in order to construct a sidewalk. He added that the sidewalk would probably have to "dogleg" across the New Circle Road on-ramp, which would be an additional burden on the petitioner. Mr. Cruse concluded by reiterating that the petitioner does not believe they should be required to construct a sidewalk along the frontage of the subject property, but they would be willing to contribute to the cost of construction.

Staff Rebuttal: Mr. Sallee stated that the staff had no rebuttal comments at this time. He noted that the staff and the petitioner had discussed the possibility of postponing this plan in order to verify the construction cost estimate, but the petitioner wished to go forward with this plan at this meeting.

Commission Questions: Ms. Copeland asked if the petitioner was obligated to construct the sidewalk on the subject property at this time. Ms. Boland answered that the petitioner was not obligated to provide a sidewalk at this time, as that obligation is only triggered by an expansion of the building on the property by 25% or more. That is the reason for the staff's proposal to require a note on the plan to ensure that there will be a future possibility of extending sidewalks across the subject property.

Action: A motion was made by Ms. Roche-Phillips, seconded by Mr. Owens, and carried 9-0 (Holmes and Wilson absent) to approve DP 2011-18, subject to the 13 conditions as listed in the revised staff recommendation.

V. **ZONING ITEMS** - The Zoning Committee met on Thursday, March 3, 2011, at 1:30 p.m. in the Division of Planning Office. The meeting was attended by Commission members Carla Blanton, Patrick Brewer, Ed Holmes, Carolyn Richardson, Lynn Roche-Phillips, and William Wilson. The Committee reviewed applications, and made recommendations on zoning items as noted.

A. ABBREVIATED PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS

The staff will call for objectors to determine which petitions are eligible for abbreviated hearings.

Abbreviated public hearings will be held on petitions meeting the following criteria:

- The staff has recommended approval of the zone change petition and related plan(s)
- The petitioner concurs with the staff recommendations
- Petitioner waives oral presentation, but may submit written evidence for the record
- There are no objections to the petition

B. FULL PUBLIC HEARINGS ON ZONE MAP AMENDMENTS AND RELATED PLANS – Following abbreviated hearings, the remaining petitions will be considered.

The procedure for these hearings is as follows:

- Staff Reports (30 minute maximum)
- Petitioner's report(s) (30 minute maximum)
- Citizen Comments
 - (a) proponents (10 minute maximum OR 3 minutes each)
 - (b) objectors (30 minute maximum) (3 minutes each)
- Rebuttal & Closing Statements
 - (a) petitioner's comments (5 minute maximum)
 - (b) citizen objectors (5 minute maximum)
 - (c) staff comments (5 minute maximum)
- Hearing closed and Commission votes on zone change petition and related plan(s)

Note: Requests for additional time, stating the basis for the request, must be submitted to the staff no later than two days prior to the hearing. The Chair will announce its decision at the outset of the hearing.

Note: Chair Richardson declared a brief recess at 3:02 p.m. The meeting reconvened at 3:08 p.m.

1. FEDE, LLC, ZONING MAP AMENDMENT & THE MARQUIS BUILDING ZONING DEVELOPMENT PLAN

- a. MARV 2011-5: FEDE, LLC (5/1/11)* - petition for a zone map amendment from a Professional Office (P-1) zone to a High Rise Apartment (R-5) zone, for 0.376 net (0.42 gross) acre, for property located at 407 Marquis Avenue. Dimensional variances have also been requested with this zone change.

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LAND USE PLAN AND PROPOSED USE

The 2007 Comprehensive Plan (Sector 3) recommends Professional Service (PS) future land use for the subject property. The petitioner proposes to rezone the property to the R-5 zone in order to renovate the existing structure, with a total of 15 dwelling units, for a density of 39.89 dwelling units per net acre.

The Zoning Committee Recommended: **Approval**, for the reasons provided by staff, and altering conditional zoning restriction (a) to read: There shall be no more than 15 dwelling units or 30 bedrooms at this location.

The Staff Recommends: **Approval**, for the following reasons:

1. The existing Professional Office (P-1) zone is no longer appropriate for the subject property because a professional office use of the building is hardly possible due to the limited availability of parking on site. This has made marketing and sale of the property for much more than a day care center or a school for academic instruction extremely challenging.
2. The requested High Rise Apartment (R-5) zone is appropriate for the subject property, for the following reasons:
 - a. The proposed R-5 zone is compatible with the existing R-4 and P-1 zoning to the north, east and south of the subject property. The existing townhouse development to the south at 415 Marquis Avenue, in conjunction with the proposed very high density residential use, are appropriate land use buffers between a single family neighborhood and the more intense commercial corridor along Euclid Avenue.
 - b. The subject property has provided a transition in land use along Marquis Avenue since it was rezoned in 1964 for the Fugazzi Business College, and the proposed apartment building would maintain that nature of use without infringing upon the established neighborhood.
 - c. The subject site is less than two blocks from a transit stop along Euclid Avenue, within close walking distance of the University of Kentucky, and is accessible to a broad range of businesses and personal services, nearby parks and schools.
 - d. Since the existing building is to be retained and renovated, the site is appropriate for multi-family residential dwelling units.
3. The Goals and Objectives of the 2007 Comprehensive Plan are furthered by the proposed reuse and rezoning of the subject property, namely Goal 8, Objective E and Goal 13, Objective G that both encourage the rehabilitation and adaptive reuse of existing underutilized buildings. The proposal will convert a vacant school building to residential dwelling units and, therefore, is consistent with these Goals and the 2007 Plan's emphasis on infill and re-development.
4. This recommendation is made subject to approval and certification of ZDP 2011-20: The Marquis Building, prior to forwarding a recommendation to the Urban County Council. This certification must be accomplished within two weeks of the Planning Commission's approval.
5. Under the provisions of Article 6-7 of the Zoning Ordinance, this property shall be subject to the following use restrictions via conditional zoning:
 - a. There shall be no more than 15 dwelling units at this location.
 - b. Any multi-family dwelling at this location shall be no more than three stories in height and no more than 35 feet in height.
 - c. The following uses shall also be prohibited:
 1. Extended-stay hotels.
 2. Incidental retail uses.
 3. Sorority and fraternity houses.

These land use restrictions are appropriate and necessary at this location to ensure that the proposed reuse of the existing building on the subject property will not negatively impact either the existing residential uses in this area or the established professional service uses on nearby properties.

b. REQUESTED VARIANCES

1. Reduce the landscape buffer (adjacent to 403 Marquis Ave) from 15' to 0'.
2. Reduce the vehicular use area screening (adjacent to 403 Marquis Ave & 415 Marquis Ave) from 5' to 0'.
3. Reduce the required interior landscaping area from 404.2 square feet to 0 square feet.
4. Reduce the minimum open space requirement from 20% to 1%.
5. Reduce the minimum parking from 27 spaces to 17 spaces.

The Staff Recommended: **Approval of the requested Perimeter Landscaping and Open Space variances (#'s 1,2, & 4)**, for the following reasons:

1. Granting the requested variances should not adversely affect the public health, safety or welfare, nor alter the character of the general vicinity. In regards to the landscaping variances, the parking lot exists and functions today, with existing landscaping provided to the southwest and shared drive aisles to the northeast. In regards to the open space, the adaptive reuse of the building and the significant public park just one block away are justifiable factors.
2. Approval of the variances will not result in an unreasonable circumvention of the Zoning Ordinance. The purpose of the ordinances related to infill and redevelopment is to encourage rehabilitation and compatible new development. These variances will allow the adaptive reuse of this former school building into residential dwelling units.

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3. The special circumstances that apply to the subject properties is the existing development of the site, which is proposed to be adaptively re-used.
4. Strict application of the requirements of the Zoning Ordinance would create an unnecessary hardship to the applicant, and would likely lead to either only partial use of the existing structure or demolition of the building to comply with the ordinance.
5. The circumstances surrounding this request are not the result of actions taken by the applicant since the adoption of the Zoning Ordinance.

This recommendation of approval is made subject to the following conditions:

- a. Provided the Urban County Council rezones the property R-5; otherwise, any Commission action of approval of this variance is null and void.
- b. Should the property be rezoned, it shall be redeveloped in accordance with the approved Development Plan, or as amended by a future Development Plan approved by the Commission, or as a Minor Amendment permitted under Article 21-7 of the Zoning Ordinance.
- c. A note shall be placed on the Zoning Development Plan indicating the variance that the Planning Commission has approved for this property (under Article 6-4(c) of the Zoning Ordinance).

The Staff Recommended: **Withdrawal of the requested Interior Landscape Area variance (# 3)**, for the following reason:

1. Article 18-2 (c) only requires interior landscaping to be provided when new construction is proposed. The Interior Landscape Area variance request is unnecessary for the applicant's proposed redevelopment of this site, since no new construction is anticipated.

The Staff Recommended: **Postponement of the requested Parking variance (# 5)**, for the following reason:

1. More time is needed for staff to do field visits to verify the availability of on-street parking in the daytime, nighttime, and weekends while UK is in session.

- c. ZDP 2011-20: THE MARQUIS BUILDING (5/1/11)* - located at 407 Marquis Avenue. **(The Roberts Group)**

The Subdivision Committee Recommended: **Approval**, subject to the following conditions:

1. Provided the Urban County Council rezones the property R-5; otherwise, any Commission action of approval is null and void.
2. Provided the Planning Commission grants the requested variances; otherwise, any Commission action of approval is null and void.
3. Urban County Engineer's acceptance of drainage, storm and sanitary sewers, and floodplain information.
4. Urban County Traffic Engineer's approval of parking, circulation, access, and street cross-sections.
5. Building Inspection's approval of landscaping and landscape buffers.
6. Urban Forester's approval of tree inventory map.
7. Delete note #10 (duplicates #6).
8. Correct note #7 to reflect Code of Ordinances requirements.
9. Provide typical dimensions for parking spaces and drive aisles.
10. Delete extraneous utility information.
11. Denote that storm drainage is off site.
12. Denote existing and/or proposed easements.
13. Dimension landscape buffer adjacent to R-1E zone.
14. Provided the Planning Commission grants the requested variances.
15. Resolve the use of the southwest corner of the lot for interior landscaping.

Zoning Presentation: Ms. Wade began the staff's presentation, noting that a proposed revision to the conditional zoning restrictions had been distributed to the Commission members. She briefly oriented the Commission to the location of the subject property on Marquis Avenue near Euclid Avenue, between the Columbia Heights and Hollywood neighborhoods. In the vicinity of the subject property, there is Professional Office zoning along Euclid Avenue and across Marquis Avenue; the Kroger store, which fronts onto Euclid Avenue and is zoned B-1; and R-1E and R-4 zoning in the adjacent residential areas. Ms. Wade displayed several photographs of the subject property and surrounding area, noting the existing structure; the off-street parking area; and the dense vegetation at the rear of the property, which acts as a buffer to the residential properties along Park Avenue.

Ms. Wade stated that the subject property was rezoned in 1964 in order to accommodate the Fugazzi Business College, which was formerly located in the existing structure on the property. Since the business college closed, the subject property changed hands several times. Most recently, the structure was used to temporarily house the campus of Saints Peter and Paul Middle School, while their permanent building was renovated.

Ms. Wade said that the 2007 Comprehensive Plan recommends Professional Service use for the subject property, as well as the majority of the properties along Euclid Avenue. The petitioner is proposing to rezone the property to R-5 in order to renovate the existing structure for about 15 dwelling units with up to 30 bedrooms. That number of

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dwelling units would result in a residential density of 39.89 dwelling units per net acre, which would fall within the definition of Very High Density Residential use. The petitioner is proposing an R-5 zone, rather than R-4, because the existing building has a floor area ratio (FAR) that exceeds what is allowed in the R-4 zone. Ms. Wade said that the R-4 zone allows a .7 FAR, while the existing building has a .82 FAR. The petitioner is also proposing to restrict the height of the building via conditional zoning.

Ms. Wade stated that the petitioner contends that the proposed R-5 zoning is more appropriate in this location than the existing P-1 zoning. To support that contention, the petitioner referenced several Goals and Objectives from the 2007 Comprehensive Plan that would be furthered with the rezoning of the subject property. In assessing the petitioner's request, the staff considered the compatibility of the proposed development with the rest of the neighborhood; what impacts a very high density residential use could have to the on-street parking in the area; what the overall character of the area is; and the close proximity of the subject property to the University of Kentucky, as well as transit stops and other support services. The staff concluded that the R-5 zone was more appropriate at this location than the existing P-1 zone, for the reasons as listed in the staff report and on the agenda.

Ms. Wade stated that the staff presented that recommendation to the Zoning Committee at their meeting three weeks ago. They recommended approval of this request, with some changes to the proposed conditional zoning restrictions. Since the Zoning Committee meeting, the staff has worked with the petitioner, and has drafted the following proposed revision to the conditional zoning restrictions:

5. Under the provisions of Article 6-7 of the Zoning Ordinance, this property shall be subject to the following use restrictions via conditional zoning:
 - a. There shall be no more than ~~45-17~~ dwelling units **and no more than a total of 30 bedrooms** at this location.
 - b. Any multi-family dwelling at this location shall be no more than three stories in height and no more than 35 feet in height.
 - c. The following uses shall also be prohibited:
 1. Extended-stay hotels.
 2. Incidental retail uses.
 3. Sorority and fraternity houses.

These land use restrictions are appropriate and necessary at this location to ensure that the proposed re-use of the existing building on the subject property will not negatively impact either the existing residential uses in this area or the established professional service uses on nearby properties.

Ms. Wade said that the staff originally proposed restricting the number of dwelling units on the subject property to 15. Since the staff drafted their original recommendation, however, the petitioner suggested the possibility of allowing up to 17 units in the building still, with no more than 30 bedrooms, since designs for this renovation have not been finalized. Increasing the number of units permitted would afford the petitioner the opportunity to construct a mixture of one and two-bedroom units, rather than limiting the property to two-bedroom units only. The staff was agreeable to that proposal, provided that the number of required parking spaces would not increase. Restricting the number of bedrooms allowed will assure that the proposed number of parking spaces will be sufficient.

Development Plan Presentation: Mr. Martin presented the corollary preliminary development plan associated with this rezoning request, using a rendered copy of the plan to denote the location of the existing 13,400 square-foot, three-story building; the existing parking and access drive to the rear of the building; and the landscape buffer.

Mr. Martin stated that the proposed development plan has been slightly revised since the Subdivision Committee meeting three weeks ago. He said that the petitioner revised the parking layout, which increased the number of proposed on-site parking spaces. Mr. Martin noted that the petitioner has requested four variances, one of which is to reduce the required open space area on the subject property. Since the property is fully developed, and because the area in front of the building line cannot be counted as open space, it would be very difficult to meet the open space requirement. Mr. Martin said that the Subdivision Committee recommended approval of this plan, subject to the conditions as listed on the agenda. He said that the petitioner satisfied condition #15 with the submission of their revised plan, so that condition could be deleted as worded. Should the Commission choose to approve the proposed conditional zoning restrictions, they would need to add a new #15 to denote those restrictions.

Variance Report: Mr. Emmons presented the staff report on the requested variances, noting that they pertained to the required landscaping, the minimum open space, and the minimum required parking. He said that the staff had prepared a supplemental staff report on the variances, copies of which had been distributed to the Commission members prior to the start of this hearing.

With regard to the three requested landscaping variances, Mr. Emmons stated that the petitioner had requested variances to the perimeter screening requirements along the northern and southern boundaries of the property, as well as to the interior landscaping requirements. The staff is recommending withdrawal of the requested interior

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landscaping variance, because Article 18 of the Zoning Ordinance does not require additional interior landscaping in situations which are considered an adaptive reuse of a property. The staff is recommending approval of the variances to the landscaping requirements along the northern and southern property boundaries. Along the southern boundary, the owner of the adjacent townhouse development supplied adequate perimeter screening as part of the construction process for those units. Along the northern boundary, installing the required landscaping would result in the blocking of the parking circulation pattern between the subject property and the adjacent properties. Installing the required landscaping could also result in the loss of some of the existing parking spaces.

Mr. Emmons said, with regard to the requested open space variance, that 20% of the total lot area is the amount of open space typically required in the R-5 zone. The only part of the property that would count as open space is the approximately 5' area directly in front of the existing building. In reviewing the property, the staff was not able to find any way for the petitioner to achieve additional open space without removing the existing structure or losing parking spaces. Therefore, the staff is recommending approval of the requested variance of the open space from 20% to 1%.

With regard to the requested parking variance, Mr. Emmons stated that parking was the major concern with the proposed development. The petitioner initially requested a parking variance from 27 required spaces to 17 spaces, in order to depict a parking area on their plan which would meet all of the current design standards with regard to parking lots. That parking configuration resulted in a proposed loss of four spaces, from 21 existing to 17. The staff recommended that the petitioner re-stripe the area as it exists, which resulted in 22 total parking spaces on the current development plan. The existing parking configuration works well for the subject property, so the staff is recommending approval of the requested parking variances, with the exception of recommending a variance 20 spaces instead of 17. Although the revised development plan depicts 22 spaces, it does not indicate a dumpster location. The petitioner believes that they could come to an agreement with adjoining property owners, by the time of the filing of a final development plan, to share a dumpster. However, if the petitioner does need to place a dumpster on the subject property, they could use two of the parking spaces depicted on the revised plan to accommodate it. Having researched the parking conditions on the subject property and in the surrounding area for the past three weeks, the staff believes that 20 spaces will accommodate the proposed use of the property, providing one space for each unit and three extra spaces for guests. As illustrated on the Staff Exhibit distributed earlier, the staff observed that there are usually at least 12 spaces within one block of the subject property that are not presently subject to residential permit requirements. The staff is recommending approval of the requested variances #1, 2, 4, and 5, and withdrawal of variance #3.

Petitioner Representation: Rena Wiseman, attorney, was present representing the petitioner. She stated that the petitioner purchased the subject property for the use of Saints Peter and Paul School to use during the renovation of their campus. Now that the school has returned to its location, the petitioner is seeking another use for the property.

Ms. Wiseman noted, with regard to the proposed conditional zoning restrictions, that the petitioner would like to have the ability to construct one and two-bedroom units for more flexibility in meeting market demands. She said that, since the subject property is very limited in the possible number of off-street parking spaces, it would be nearly impossible for a higher-density use to locate there. Ms. Wiseman stated that the petitioner is in agreement with the staff's recommendations on the proposed rezoning, variances, and development plan, and she asked to withdraw the requested variance for interior landscaping.

Commission Questions: Ms. Copeland asked if the subject property is currently for sale. Mark Naylor, petitioner, answered that it is currently for sale. Ms. Copeland stated that she is in support of this rezoning request, because she believes that the proposed development could help fill a need for handicapped housing units in Lexington, since it will offer first-floor units. The area is walkable and well-served by public transportation, so it would be an ideal location for a citizen with limited mobility. Ms. Copeland suggested that the proposed development might be appropriate for use as a housing unit by local housing assistance programs or churches.

Ms. Beatty asked if the requested variance to the required open space is typical, and if the staff believes that granting that variance could set a precedent. Mr. Emmons answered that such a request is not typical, but the staff took into account as part of their review that the proposed development is an adaptive reuse of the existing building. If the property owner should choose to tear down that building and construct a new one, the staff does not believe that 1% of open space would be appropriate. The staff also considered the close proximity of Woodland Park and its useable open space one block from this site.

Zoning Action: A motion was made by Mr. Brewer, seconded by Ms. Roche-Phillips, and carried 9-0 (Holmes and Wilson absent) to approve MARV 2011-5, for the reasons provided by staff, including the revised conditional zoning restrictions as listed in the revised staff recommendation.

Variance Action: A motion was made by Mr. Brewer, seconded by Ms. Beatty, and carried 9-0 (Holmes and Wilson absent) to approve requested variances #1, 2, 4 and 5, withdrawing #3, for the reasons provided by staff.

Development Plan Action: A motion was made by Mr. Brewer, seconded by Ms. Beatty, and carried 9-0 (Holmes and Wilson absent) to approve ZDP 2011-20, subject to the first 14 conditions as listed, and adding a new #15 to denote the addition of the conditional zoning restrictions.

VI. COMMISSION ITEM

- A. INITIATION OF ZONING ORDINANCE TEXT AMENDMENT** – Ms. Wade stated that the need for the proposed text amendment had come to the staff's attention due to a request that was recently filed with the Board of Adjustment. In the past, the Division of Building Inspection has issued occupancy permits for catering in the B-4 zone. However, recently, they have been interpreting the Ordinance more strictly, and only allowing catering in the I-1, I-2, and P-2 zones, in which catering establishments are explicitly permitted. As part of their research for the relevant Board of Adjustment case, the staff learned that catering had been allowed in the B-4 zone in the past. The applicant has withdrawn their application to the Board of Adjustment, and the staff now believes that it would be appropriate to codify the use that has already been permitted, and to make it explicitly clear that catering is allowed as a principal use in the B-4 zone. The staff also learned as part of their research that catering has been permitted in the past as an accessory use to a restaurant in a B-1 zone; and has some similarities to commissaries. Therefore, the staff is proposing a text amendment to the Zoning Ordinance to define catering in Article 1; to prohibit catering and commissaries in agricultural and residential zones; to allow catering as a principal use in the I-1, I-2, P-2, B-3, and B-4 zones; and to allow catering as an accessory use in the B-1 zone. The proposed text amendment would also define parking requirements for catering and commissary uses, which would be the same as the existing requirement for shops of special trade. Ms. Wade stated that, should the Commission choose to initiate this text amendment, it would likely be heard at their April 28th meeting.

Commission Questions: Ms. Copeland asked if trucks selling food on farms or in neighborhoods would be considered as a catering operation. Ms. Boland answered that such uses are regulated by the Code of Ordinances as a vendor. The Council is currently considering a very extensive re-write of the Ordinances in order to tighten the regulations on such uses. She noted that, since those businesses are mobile and do not have a land use component, they must be regulated through the Code of Ordinances.

Mr. Brewer asked if the proposed text amendment would affect Keeneland. Ms. Boland answered that Keeneland is a conditional use, and all of its operations are included under conditional use permits approved by the Board of Adjustment. All of the catering and similar functions at Keeneland are considered as accessory uses to the main conditional use approved there for a racetrack.

Mr. Owens asked how the regulation of wineries compares to catering establishments. Ms. Wade responded that wineries are permitted uses in the agricultural zones, and that they are allowed to have restaurants and bistros as accessory uses. She added that the intent of this proposed text amendment is not to allow wineries to also have catering as a principal use.

Ms. Beatty asked if the "intended use" language would have an impact on Keeneland or existing wineries. Ms. Boland answered that the proposed text amendment is to regulate catering as a principal use. A restaurant would not typically be permitted to have a caterer as its principal use; similarly, the staff does not believe that Keeneland or any of the existing wineries would have catering functions that would become so extensive that it would overshadow the principal use. If that happened, catering would not be allowed as the principal use. Ms. Boland noted that the proposed text amendment should not interfere with any of the existing agritourism uses.

Mr. Brewer asked if the staff had notified caterers about the proposed text amendment. Ms. Wade answered that the staff would typically notify only neighborhood associations, as required by Council resolution, but she noted that the petitioner in the BOA case had compiled a list of existing caterers and the zoning category in which their facilities are located. Most of those caterers are located in I-1, B-4, or B-1 zones, with a few located in agricultural zones which are accessory uses. Mr. Brewer asked if there were any regulations that would require the notification of caterers. Ms. Wade responded that there were no such regulatory requirements, but the staff could do so if the Commission so chose. Ms. Boland noted that any text amendment has publication requirements as outlined in KRS 100, which provides the proper notice with regard to legal liability.

Mr. Owens asked if the staff could name the Board of Adjustment case that prompted this proposed text amendment. Mr. Sallee answered that he did not recall the applicant's name, but the property was located in a B-4 zone on Jefferson Street.

Action: A motion was made by Mr. Owens, seconded by Ms. Roche-Phillips, and carried 9-0 (Holmes and Wilson absent) to initiate the Zoning Ordinance text amendment as proposed by staff.

- VII. STAFF ITEMS** – Mr. Sallee noted that, at their last meeting, the Planning Commission had voted to cancel their next work session.

- VIII. AUDIENCE ITEMS** – No such items were presented.

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IX. MEETING DATES FOR APRIL, 2011

Subdivision Committee, Thursday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	April 7, 2011
Zoning Committee, Thursday, 1:30 p.m., Planning Division Office (101 East Vine Street).....	April 7, 2011
Subdivision Items Public Meeting , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	April 14, 2011
Work Session, Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	April 21, 2011
Technical Committee, Wednesday, 8:30 a.m., Planning Division Office (101 East Vine Street).....	April 27, 2011
Zoning Items Public Hearing , Thursday, 1:30 p.m., 2 nd Floor Council Chambers.....	April 28, 2011

X. ADJOURNMENT – There being no further business, Chairwoman Richardson declared the meeting adjourned at 3:08 p.m.

Carolyn Richardson, Chair

Mike Owens, Secretary

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